

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMERICAN FAST FREIGHT, INC., and
HAWAIIAN OCEAN TRANSPORT, INC.,

Plaintiffs,

v.

NATIONAL CONSOLIDATION &
DISTRIBUTION, INC., a New Jersey
corporation; NEW CONCEPT
DISTRIBUTION, INC., a Nevada
corporation; NCD GLOBAL, INC., a New
Jersey corporation; NCD COMPANIES,
INC., a corporation,

Defendants.

CASE NO. C07-0716BHS

ORDER GRANTING
PLAINTIFFS' MOTION TO
COMPEL NCD, INC. TO
PRODUCE CERTAIN DIGITAL
ACCOUNTING FILES AND
GRANTING PLAINTIFFS'
MOTION TO AMEND CASE
SCHEDULE

This matter comes before the Court on Plaintiffs' Motion to Compel NCD, Inc. to Produce Certain Digital Accounting Files (Dkt. 43) and Plaintiffs' Motion to Amend Case Schedule (Dkt. 45). The Court has considered the pleadings filed in support of and in opposition to the motions and grants the motions for the reasons herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 8, 2007, American Fast Freight, Inc. ("American Fast Freight") and its wholly-owned subsidiary, Hawaiian Ocean Transport, Inc., brought suit in federal court against National Consolidation & Distribution, Inc. Dkt. 1. On August 7, 2007, Plaintiffs filed an amended complaint adding New Concept Distribution, Inc., NCD Global, Inc., and NCD Companies, Inc. as parties. Dkt. 15. The facts, according to the amended complaint, are as follows: In 2002, Defendant NCD, Inc. entered into an arrangement with Plaintiffs to transport goods from various locations in the continental United States for delivery to Alaska and Hawaii. Dkt. 15 at 4. On March 15, 2002, NCD, Inc. signed a Credit Application to do business with Plaintiffs.

1 *Id.* Plaintiffs signed and approved the Credit Application. Under the Credit Application,
2 Defendants agreed to advance the freight charges due to American Fast Freight by paying
3 American Fast Freight's invoices. The Credit Application provided that the invoices were due
4 and payable immediately, that the invoices would become past due if not paid within thirty days
5 of the invoice date, that a 1.5% late payment penalty applied to all unpaid or past due balances,
6 and that American Fast Freight was authorized to sue Defendants to collect such unpaid or past
7 due amounts. *Id.* at 4.

8 Plaintiffs contend that Defendants have failed to pay amounts due and owing for the
9 transportation of goods to Alaska and Hawaii. *Id.* at 5. Plaintiffs sue for breach of contract and
10 unjust enrichment and contend that the Court should disregard Defendants' corporate form. *Id.* at
11 4-6.

12 On September 28, 2007, Plaintiffs served Requests for Production 50, 51, 52, 53, and 54
13 on NCD, Inc. Dkt. 44 at 2. The requests seek production of NCD, Inc.'s QuickBooks accounting
14 data file for the period beginning July 1, 2003, and ending September 30, 2007, and for fiscal
15 years ending in June of 2004, 2005, 2006, and 2007. Dkt. 44, Exh. 1 at 5. On October 30, 2007,
16 NCD, Inc. served its objections to the requests but did not produce any information responsive to
17 the requests. Dkt. 44 at 2. NCD, Inc. objects on the grounds that the requests are overly broad,
18 unduly burdensome, harassing, duplicative, and outside the scope of the amended complaint.
19 Dkt. 44, Exh. 1 at 5.

20 II. DISCUSSION

21 A. MOTION TO COMPEL

22 Federal Rule of Civil Procedure 26 governs discovery and provides, in part, as follows:

23 Parties may obtain discovery regarding any matter, not privileged, that is relevant
24 to the claim or defense of any party. For good cause, the court may order
25 discovery of any matter relevant to the subject matter involved in the action.
26 Relevant information need not be admissible at the trial if the discovery appears
27 reasonably calculated to lead to the discovery of admissible evidence. All
28 discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

1 Fed. R. Civ. P. 26(b)(1). Discovery may be limited if the Court determines that the
2 discovery sought is unreasonably cumulative or duplicative or is obtainable from a more
3 convenient, less burdensome, or less expensive source; that the seeking party has had
4 ample opportunity to obtain the information sought; or that the burden or expense of the
5 discovery request outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2)(C).

6 If a party fails to answer an interrogatory or a request for production, the party
7 may move to compel disclosure pursuant to Federal Rule of Civil Procedure 37. Fed. R.
8 Civ. P. 37(a)(2)(B). The motion must certify that the parties have made a good faith
9 effort to confer and resolve the dispute themselves. *Id.* A good faith effort to confer
10 “requires a face-to-face meeting or a telephone conference.” Local Rule CR 37(a)(2)(A).

11 In this case, the parties conferred on November 6, 2007. Dkt. 44 at 2. At that
12 discovery conference NCD, Inc. agreed to produce the discovery that is the subject of this
13 motion. *Id.* at 3. Apparently, the disputed discovery requests remain outstanding. NCD,
14 Inc. has failed to file a response to the Motion to Compel, and the Court construes such
15 failure as an admission that the motion has merit. *See* Local Rule CR 7(b)(2).

16 NCD Inc.’s accounting information may be relevant to Plaintiffs’ contention that
17 Defendants’ corporate form should be disregarded. This electronically stored information
18 may be copied to CD and produced to Plaintiffs in that form. Dkt. 44 at 3. Without the
19 benefit of a response from NCD, Inc., it is unclear how the requests for production might
20 be unduly burdensome to NCD, Inc. Therefore, Plaintiffs’ Motion to Compel (Dkt. 43) is
21 granted, and materials responsive to the requests for production are due ten days from the
22 date this order is filed.

23 **B. MOTION TO AMEND CASE SCHEDULE**

24 Plaintiffs request an amendment of certain pretrial deadlines, and Defendants do
25 not oppose the request. *See* Dkt. 48. Therefore, the pretrial deadlines are hereby amended
26 as follows:

Deadline for the FILING of any motion to join parties	December 21, 2007
Disclosure of expert testimony under FRCP 26(a)(2)	January 4, 2008
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	January 18, 2008
All motions related to discovery must be FILED by	January 24, 2008
Discovery COMPLETED by	February 15, 2008
All dispositive motions must be FILED by	February 21, 2008
Settlement conference per Local Rule CR 39.1(c)(2) HELD no later than	March 27, 2008
Mediation per Local Rule CR 39.1(c) HELD no later than	April 21, 2008
Letter of compliance as to Local Rule CR 39.1 FILED <i>A roster of Local Rule CR 39.1 mediators can be located on the Internet at www.wawd.uscourts.gov. If you do not have access to the internet, please contact the Clerk's Office at (253) 882-3800.</i>	April 28 2008
Motions in limine should be FILED by and NOTED on the motion calendar no later than the second Friday thereafter.	April 21, 2008
Agreed pretrial order FILED with the Court by	April 25, 2008
Trial briefs due	April 28, 2008

III. ORDER

Therefore, it is hereby

ORDERED that Plaintiffs' Motion to Compel NCD, Inc. to Produce Certain Digital Accounting Files (Dkt. 43) is **GRANTED** and Plaintiffs' Motion to Amend Case Schedule (Dkt. 45) is **GRANTED** as provided herein.

DATED this 30th day of November, 2007.



BENJAMIN H. SETTLE
United States District Judge